

<sup>1</sup> “To make a claim under section 504 in the education context, something more than an IDEA violation for failure to provide a FAPE in the least restrictive environment must be shown. A plaintiff must also demonstrate some bad faith or gross misjudgment by the school or that he was discriminated against solely because of his disability.” *W.C. ex rel. Sue C. v. Cobb Cnty. Sch. Dist.*, 407 F. Supp. 2d 1351, 1363-64 (N.D. Ga. 2005).

The Plaintiff first alleged the Defendant failed to provide T.J. with a FAPE in a suit filed on September 1, 2011. *Premessa Jenkins v. Butts County*, No. 5:11-cv-350 (MTT). The Court dismissed the Plaintiff's complaint without prejudice because she failed to request a due process hearing pursuant to the administrative requirements of IDEA. 20 U.S.C. §§ 1415(i)(2)(A), 1415(l). After the Plaintiff filed a pro se due process complaint against the Defendant, and an Administrative Law Judge ("ALJ") dismissed her complaint, the Plaintiff filed another suit with this Court on February 7, 2013.

*Premessa Jenkins v. Butts County*, No. 5:13-cv-47 (MTT). The Court denied the Defendant's motion to dismiss and remanded the Plaintiff's claims to the ALJ for further proceedings. *See Jenkins*, No. 5:13-cv-47 (MTT), Doc. 48.

The Plaintiff alleges that the instant suit is "an appeal" of the February 7, 2013 suit and two cases she filed in the Office of State Administrative Hearings (OSAH). (Doc. 5 at 1). Along with her complaint, the Plaintiff has submitted a copy of the ALJ's January 22, 2015 Final Decision, which denies the Plaintiff's request for relief under IDEA. (Doc. 1-1). On April 3, 2015, the Court granted the Plaintiff's motion to proceed in forma pauperis. (Doc. 4). However, the Court ordered the Plaintiff to recast her complaint because she simply instructed the Court to "reference" her February 7, 2013 suit and the two OSAH hearings. (Doc. 4). In response, the Plaintiff has alleged facts supporting her claims, and thus, the Court can complete its frivolity review. (Doc. 4). Pursuant to 28 U.S.C. § 1915A, because the Plaintiff is proceeding in forma pauperis, the Court is required to dismiss the case if it (1) is frivolous or malicious, (2) fails to state a claim upon which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(b). Here, the Court

finds that the Plaintiff's complaint, which purports to be an appeal, passes § 1915A frivolity review. Accordingly, the Plaintiff can proceed with her claims against Defendant Butts County School District.

**SO ORDERED**, this 20th day of April, 2015.

S/ Marc T. Treadwell  
MARC T. TREADWELL  
UNITED STATES DISTRICT COURT